U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 2 7 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a supermarket and grocery store. It seeks to permanently employ the beneficiary in the United States as a senior purchasing manager. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1]

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).[2] The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is April 26, 2011. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the petitioner failed to establish that the beneficiary possessed the 60 months of experience in the offered position as required by the terms of the labor certification and the requested preference classification; and that the petitioner failed to establish its ability to pay the proffered wage from the priority date.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[3]

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's*

---

[1] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.*

[2] As is discussed in more detail below, the beneficiary did not sign the approved labor certification as required by 20 C.F.R. § 656.17(a)(1).

[3] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Tea House, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in any field of study.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months of experience in the job offered.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: None.

The labor certification states that the beneficiary qualifies for the offered position based on his experience as a purchasing manager with , South Korea from April 1, 1988 until April 30, 1993. The beneficiary's supervisor for this employment is listed as No other experience is listed.

The regulation at 8 C.F.R. § 204.5(g)(1) states, in pertinent part:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The record contains a translated Certificate of Experience dated November 6, 2009, which states that it was executed by The translation certificate was performed by counsel's legal assistant on November 9, 2009 and states that the translator is fluent in English and Korean and that the translation is complete and accurate. The translated Certificate of Experience states that the beneficiary was employed by the company as a purchasing manager from April 1, 1988 until April 30, 1993, but does not describe the duties performed by the beneficiary.

The record also contains a second translation of the same Certificate of Experience. The translation is dated August 28, 2012. The translation certificate states that the translator is fluent in English and Korean and that the translation is complete and accurate. The new translation contains two changes: the employer is now named and the President of the company is now named [4]

[4] Counsel's August 28, 2012 letter in response to the director's request for evidence states "We

The record also contains a translated letter on President, dated August 23, 2012. The letter states that the beneficiary was employed by the company as a purchasing manager from April 1, 1998 until April 30, 1993. The letter describes the duties performed by the beneficiary in this position.

The record also contains a copy of a business card for

After issuing a request for evidence and a notice of intent to deny, the director denied the petition because the petitioner failed to adequately resolve multiple inconsistencies in the record.[5] Specifically, the director noted the following:

- The beneficiary's claimed former employer was alternately named
- The name of the company's president was alternately listed as
- The beneficiary's employment with the petitioner was not disclosed at Part K of the labor certification.
- The date the beneficiary claimed to have initiated employment with the petitioner on his Form G-325A, Biographic Information is inconsistent with the start date of his H-1B status with the petitioner.
- The beneficiary's initial U.S. address stated on his Form G-325A is inconsistent with his date of admission into the U.S.

The record contains an amended Form G-325A for the beneficiary in an attempt to resolve the inconsistencies pertaining to the beneficiary's addresses in the United States and his dates of employment with the petitioner. The director concluded that the new G-325A and the evidence in the record did not adequately explain and resolve the multiple inconsistencies identified by the director in the request for evidence and notice of intent to deny. *See Matter of Ho*, 19 I&N Dec. at 591-92.

---

would also like to correct the name of the president of His name in English is His name on the Certificate of Experience is in Chinese and the translator misread his name."

[5] It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On appeal counsel's brief states:

- While the labor certification does not list the beneficiary's employment with the petitioner at Part K, it did indicate at Part J.23 that the beneficiary was "currently employed by the petitioning employer."
- The beneficiary incorrectly listed the date he initiated his employment with the petitioner because he accidentally used the later approval date of his family's H-4 status instead of his earlier-approved H-1B status.
- The erroneous information on the Form G-325A regarding the date that the beneficiary started living in the U.S. was not intentional. The beneficiary's family preceded him to the United States, and the G-325A accidentally used his family's entry date and initial address.

Submitted with the appeal brief are two translated experience letters. The first is by dated November 7, 2012. The letter states that the author worked with the beneficiary for more than five years at , and that the beneficiary was employed by the company as a purchasing manager from April 1, 1988 until April 30, 1993. The second letter, by and dated November 5, 2012, also states that the author worked with the beneficiary at , and that the beneficiary was employed by the company as a purchasing manager from April 1, 1988 until April 30, 1993. Neither letter describes the duties performed by the beneficiary, and neither letter is on

Counsel fails to discuss or submit any evidence to challenge the director's conclusion that the petitioner failed to establish its ability to pay the proffered wage pursuant to 8. C.F.R. § 204.5(g)(2). Therefore, that ground of the director's decision remains undisturbed.

Counsel attempts to resolve the multiple inconsistencies mentioned in the director's decision with unsupported assertions in his brief in support of the appeal. As is noted above, the petitioner must resolve any inconsistencies in the record with independent objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

---

[6] In addition, the translations of the experience letters are not certified and therefore do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which states:

> *Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Accordingly, the letters will not be accorded any weight in this proceeding.

Therefore, the petitioner has failed to adequately resolve the multiple inconsistencies in the record relating to the petitioner's prior employment abroad, his employment with the petitioner, and his physical presence in the United States. As is noted above, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Beyond the decision of the director, the petition is not accompanied by a valid labor certification.[7] A petition for an advanced degree professional must be accompanied by a valid labor certification. *See* sections 212(a)(5)(A) and (D) and 203(b)(3)(C) of the Act; *see also* 8 C.F.R. § 204.5(a). An approved labor certification that is not signed by the beneficiary is not valid. 20 C.F.R. § 656.17(a)(1). As is noted above, the beneficiary did not sign the labor certification submitted with the petition.

In summary, on appeal, counsel failed to address the director's determination that the petitioner did not possess the ability to pay the proffered wage, and counsel failed to resolve the multiple inconsistencies in the record with independent, objective evidence. In addition, the petition was not accompanied by a valid labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

---

[7] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).